of presentation and of the notice of the proposed security and a copy of the petition." In that case, the respondent applied to strike out the petition on the ground that no notice of presentation of the petition and of the proposed security was served on him. It was urged for the petitioner that while the provisions regarding the presentation of the petition within the period of twenty-one days were peremptory, those of sub-section (4) were not imperative. It was held, however, by the Court of Appeal, that they were peremptory and that the terms not complied with were a condition precedent to the election petition. The same principle would apply in this case.

I therefore hold that the provisions of rule 15 are mandatory and the breach thereof renders the petition a nullity.

As to the suggestion that it would be a hardship if the mere absence of notice should be held to operate against the petition, I need only refer to the observation of Groves J. in the above case at page 137:—

"It is said that there would be hardship supposing money deposited, if mere omission of notices should prevent a petition. I see no more hardship than may occur in any case where a definite time is to be observed."

Earlier in his judgment, his Lordship had also said this:—

"The meaning of the enactment is that the petition shall not be kept long hanging over the heads of persons elected in municipal corporations. The petition must be presented in twenty-one days, and during that time the petitioners should read the Act and ascertain what they have to do. We have found great inconvenience in ordinary cases where the court have power to extend the time, for we are much occupied with applications for extension of time, and in many cases it is most important that the time of proceeding should be limited, and that persons should know when they are safe."

Petition struck out.

Solicitors: *Rajendra & Teik Ee; Shook Lin & Bok.*

MUI WING SHUI v. NGEOW JOO CHONG

[O.C.J. (Winslow J.))September 30, 1964]

[Singapore — Suit No. 1409 of 1963]

Contract — Claim for money had and received — Illegal transaction — Whether party to an illegal transaction can recover money due under such transaction.

Civil Law Ordinance, (Cap. 24), s. 6 — Singapore Turf Club Sweepstakes ticket.

Common Gaming Houses Ordinance, 1961, ss. 23 and 24 — Selling lottery tickets by unauthorized person — Public lottery.

The plaintiff claimed $24,814 plus interest, which he alleged to be the difference between $104,814, the prize of a Singapore Turf Club Sweepstakes ticket, and $80,000 paid to the plaintiff by the defendant after the latter had collected the prize money. The plaintiff had bought the ticket from one of the shop-assistants at the defendant's medical store and the tickets formed part of an allotment which the defendant purchased from an authorized agent of the Singapore Turf Club. The defendant, *inter alia*, pleaded that the plaintiff was barred by section 6 of the Civil Law Ordinance because the plaintiff's claim was based on a contract or agreement by way of wagering or gaming which was rendered illegal, null and void.

Held: (1) before a public lottery conducted by the Turf Club in Singapore can be said to confer immunity from prosecution on all persons participating therein it must be shown that such a lottery is being conducted by the duly authorized officers or agents of the Turf Club at places subject to the supervision or control of one or more of its officers;

(2) in selling the lottery tickets at his shop the defendant was operating a distinct public lottery on his own which was beyond the protection of the exemption conferred by sections 23 and 24 of the Common Gaming Houses Ordinance, 1961;

(3) although the plaintiff was an innocent party to the illegal transaction, the court will not lend its aid to him as the cause of action arose from a transgression of the law.

[Editorial Note: It is regretted that the case of *Palaniappa Chettiar* v. *Arunasalam Chettiar* [1962] M.L.J. 143, P.C. which also deals with an illegal transaction was not brought to the notice of the learned trial judge].

Cases referred to:—

(1) *Kader Batcha* v. *Public Prosecutor* [1935] M.L.J. 252.

(2) *R.* v. *Latif bin Haidin* [1935] M.L.J. 84.

(3) *G. Benjamin* v. *M. Esmailjee* [1936] M.L.J. 251.

(4) *Bridger* v. *Savage* (1885) 15 Q.B.D. 363.

(5) *De Mattos* v. *Benjamin* (1894) 63 L.J. Q.B. 248.

(6) *Seong Sam* v. *Goon Food On* [1934] M.L.J. 68.

(7) *Lim Lian Wah* v. *Lee Ah Kiew* 7 F.M.S.L.R. 66.

(8) *Harry Parker Ltd.* v. *Mason* [1940] 4 All E.R. 201.

(9) *Holman* v. *Johnson* (1775) 1 Cowp. 343.

(10) *Sykes* v. *Beadon* (1879) 11 Ch. D. 170.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

Harry Wee for the defendant.

Winslow J.: The plaintiff's claim is for $24,814 plus interest at 6 per cent per annum from 12th March 1963 for money had and received by the defendant as servant or agent of the plaintiff and to his use.

This sum of $24,814 is alleged to be the difference between $104,814 being the prize due on Singapore Turf Club Sweepstakes ticket No. C654526 which won the first prize at a draw held on 17th February 1963 and $80,000 paid to the plaintiff by the defendant after the latter had collected the prize money on the former's behalf.

The defendant denies this debt but admits receiving the ticket in question from the plaintiff for the purpose of collecting the prize on the plaintiff's behalf. He however claims that the plaintiff made an outright gift of $24,814 of the

prize money to the defendant. Alternatively, he claims that he collected the prize because the plaintiff refused or was afraid to collect it from the Turf Club and that the plaintiff agreed to pay the defendant the said sum of $24,814 in consideration of the defendant's collecting the said prize. In support of this assertion the defendant refers to a document signed by the plaintiff in the Chinese language acknowledging receipt of the prize in full including confirmation of a gift to the defendant. It is significant that neither exact figures nor, for that matter, any figures, are expressed in this document.

Further or alternatively, the defendant says that no action is maintainable in respect of the plaintiff's claim because the same arose out of the sale of a lottery ticket in an illegal and void public lottery.

Further or alternatively, the defendant claims that the plaintiff is barred by section 6 of the Civil Law Ordinance (Cap. 24) because the plaintiff's claim is based on a contract or agreement by way of wagering or gaming which this section renders illegal, null and void.

In reply the plaintiff denies the alleged gift as claimed by the defendant or that he agreed to pay the defendant the sum in question in consideration of the defendant's collecting the prize on his behalf.

He also denies that he signed and wrote or executed a declaration acknowledging receipt of the prize money in full and confirming the said gift. Further or alternatively, the plaintiff claims that he wrote certain Chinese characters on a document at the defendant's request in the belief that he was acknowledging the receipt of $80,000 and that he did not know he was signing and acknowledging, and did not intend to sign and acknowledge, receipt of the prize in full and confirming the said gift.

Further or alternatively, the plaintiff states that the declaration in question was written under a mistake of fact in that he thought he was acknowledging receipt of $80,000 which he believed was the prize money in full.

The plaintiff further denies the claim is null and void and that no action is maintainable as alleged or at all.

Before dealing with the law I propose to set out my findings on the facts which are as follows:—

(a) Singapore Turf Club Sweepstakes ticket No. C654526 which won the first prize at a draw held on 17th February 1963 and attracted a first prize of the value of $104,814 was one of two tickets sold to the plaintiff at the defendant's medical store at No. 13 Neil Road by one of his shop-assistants. These two tickets formed part of an allotment of fifty Turf Club tickets which the defendant purchased, in February 1963, from one Yeow Kok Wah, an authorised agent of the Singapore Turf Club.

After the draw, the result of which was published in the English and Chinese press on 18th February 1963, the defendant's shop hummed with the news that one of the tickets sold from that shop had won the first prize. No one in the shop remembered, however, to whom the winning ticket had been sold.

(b) On 9th March, 1963, a perambulating gold-mine in the person of the plaintiff, a man of some 74 years of age, hove into view through the portals of No. 13 Neil Road with the winning ticket which he duly presented to one of the shop-assistants. Needless to say, his arrival was greeted with tremendous enthusiasm on the part of the inmates thereof including the defendant to whom the plaintiff eventually entrusted the ticket for the purpose of collecting the prize on his behalf. The question I have to decide is whether the plaintiff promised $2,600 as a gift or a reward to the defendant or whether he told him, in effect, to give him $80,000 and keep the rest.

(c) The plaintiff claims that, when he arrived at the defendant's shop, he did not know that he had already won a prize. On this, it is perhaps unnecessary for me to make any finding of fact as I do not think that it makes very much difference to the issues involved which require a decision by me as to whether the plaintiff agreed to part with $24,814 as a gift to the defendant or as a reward or consideration to the defendant for his services in collecting the prize for the plaintiff. It is however relevant to the question of the secrecy which the plaintiff is said to have enjoined the defendant to preserve with regard to the entire transaction between them.

(d) To revert to what took place in the defendant's shop on 9th March 1963, a dispute arises between the parties as to whether the plaintiff's attention was then drawn to the exact *quantum* of the prize by the defendant. The defendant says that he told the plaintiff that the prize was $104,000 plus, without giving him the exact figures as the excess was trivial. The plaintiff on the other hand claims that he was not told what the exact *quantum* was. He says that he was however told to call again a few days later to collect the prize.

(e) It may be pertinent at this stage for me to make an evaluation of the veracity and reliability of the plaintiff because, as *Kerr* points out in Fraud and Mistake, 7th Edition at page 177 — ". . .

> When a person, who, from his state of mind, age, weakness, or other peculiar circumstances, is incapable

of exercising a free discretion, is induced by another to do any act which may tend to the injury of himself or his representatives, that other shall not be allowed to derive any benefit from his improper conduct. The rule is of universal application that where a man is not a free agent, or is not equal to protecting himself, the Court will protect him. The principle is that it is right and expedient, not to save persons from the consequences of their own folly, but to save them from being victimised by other people".

(f) It seems to me that *Kerr* and others concerned in the evolution of this principle must have had exactly in mind people of the age, state of mind, weakness and peculiarities which the plaintiff evinced. As for his state of mind both counsel were agreed that he was in his dotage and there can be little doubt that senile decay had definitely set in.

(g) He placed his trust implicitly in the defendant to the extent of asking him to collect the prize on his behalf not knowing what the *quantum* was except that it was a large sum. He agreed to make a gift or reward to the latter of $2,600. He believed that the sum of $80,000 which was credited to an account opened in his name through the defendant's assistance with the Oversea-Chinese Bank was the full amount of the first prize. He later signed a document (Exh. D3) prepared by the defendant under the impression that that document carried into effect what had been agreed between them without realising the full import of what he was in fact giving away. His head was in the clouds as a result of his sudden good fortune and the defendant capitalised on this as well as his obvious senility and weakness either by omitting to apprise him of all the full facts or by failing to ensure that he understood what he was doing and that he intended to do it. The relationship between them was a special one, one that can be described as of a fiduciary nature capable of attracting the equitable doctrines of undue influence and constructive fraud. I am far from satisfied that the plaintiff was equal to protecting himself in the absence of independent advice. That advice he, more than anyone else, needed but never got.

(h) The law relating to lotteries which I shall deal with later makes it unnecessary, perhaps, for me to deal with the facts in any great detail. The important discrepancies in his evidence before me which were stressed by defendant's counsel relating to:

(i) the plaintiff's knowledge of the *quantum* of the prize when he is alleged to have told the defendant "I will be happy with $80,000. Keep the rest";

(ii) the commission which he says he agreed to pay the defendant;

(iii) the circumstances in which he came to sign a document (Exh. D3) confirming the gift to the defendant;

(iv) his knowledge of the amount which had been placed to his credit in an account opened in his name by the defendant with the Oversea-Chinese Bank South Branch in South Bridge Road.

seem to pale into insignificance in the light of his near-disabilities as a witness which I have described above. He was almost incompetent and it is therefore not surprising that the defendant was acquitted, without his defence being called, on a charge of cheating the plaintiff, in respect of the sum involved, in previous criminal proceedings. He was however, in my view, trying to tell the truth, however incompetent he may have appeared to be as a result of weaknesses of memory, age and infirmity. His story is, in many respects, supported by his witnesses, P.W.7 Loh Hor Chee and P.W. 8 Goh Kok Siong, whose evidence I accept.

(i) Whether he was cheated or not is irrelevant to the present proceedings. What I have to decide is whether he was capable of protecting his own interests at the relevant time and I have found that he was not.

(j) It follows that the document (Exh. D3) which he signed was not worth the paper it was written upon. It reads as follows:—

"This is to declare that my luck in striking the third day big sweep lottery of the Singapore Races held in February is really through the grace of Ngeow Joo Chong. I have received the prize money in full, to the exact amount.

I present reward, tips, commission, etc., and ask Mr. Ngeow Joo Seng to accept them. I do this willingly and it has nothing to do with other people. This declaration is specially made to avoid future dispute.

Received in full by Mui Wing Shiu. Document of settlement made by Mui Wing Shiu on 12th March, 1963."

(k) It is significant to note that not one figure is mentioned in this document which was prepared by the defendant. If the defendant had wanted to protect himself there was nothing to prevent him from inserting the actual value of the prize and the actual *quantum* of the gift or reward in this document. I reject his story that he refrained from doing this because the plaintiff asked him to keep the matter secret. The whole shop knew the plaintiff had won a prize. The defence even suggested that the plaintiff knew before he came to the shop that he had won a prize. The plaintiff's friends P.W.7 and P.W.8 knew that he had won a prize. The story of secrecy is a blatant invention on the part of the defendant. Even if the plaintiff were capable of making such a suggestion, which I think he was not, the insertion of the actual figures on a document, kept exclusively by the defendant, would not have broken the injunction to secrecy because the document itself could have been kept

secret by the defendant and no-one in the world need have known about its existence if the defendant's story is true.

(l) I have no hesitation in rejecting the story of the defendant and his witnesses in so far as it relates to the *quantum* of the gift or reward. I find that all that the plaintiff promised him after he had shaken the plaintiff's hand three times was $2,600. This amount is more consistent with the plaintiff's action in distributing gifts to the wife and other relatives of the defendant in the shop in the total amount of $91 after he had banked the sum of $80,000 paid to him by the defendant. If he had known that $24,814 had already been deducted from the prize by the defendant he would, in my opinion, have refrained from any demonstrations of charity towards members of the defendant's family.

Having made the above findings of fact it is with regret that I now have to turn to the law relating to the recovery of the sum in question which unfortunately is against the plaintiff. I have seen fit, nevertheless, to make my factual findings known so that if the matter is taken up elsewhere some means may be found to interpret the law in such a way as to permit the plaintiff to recover what is due to him. My view of the law however is that it does not allow the court to protect people like him in circumstances where he is shown to have been involved in an illegal public lottery.

Section 23 of the Common Gaming Houses Ordinance (No. 2 of 1961) provides as follows:—

"The Yang di-Pertuan Negara may by notification in the *Gazette*, either generally or in particular cases, exempt from all or any of the provisions of this Ordinance the members and officers of any racing club or association in respect of any public lottery or sweepstake held, promoted, organized, administered or operated by it or its duly authorized officers or agents at places subject to the control or supervision of any one or more of the officers of such racing club or association."

Section 24 thereof reads:—

"Notwithstanding the prohibitions and penalties prescribed and imposed in this Ordinance in relation to a public lottery it shall not be an offence for any person to buy a ticket or chance or take part in any public lottery held, promoted, administered or operated by a racing club or association which has been exempted under the provisions of section 23 of this Ordinance."

These are identical to sections 22 and 23 respectively of the Common Gaming Houses Ordinance (Cap. 114) which the Ordinance of 1961 repealed.

An exemption was granted to the members and officers of the Singapore Turf Club under section 22 of the repealed Ordinance on 2nd June 1960 by *Gazette* Notification No. S 169 which is in the following terms:—

"In exercise of the powers conferred by section 22 of the Common Gaming Houses Ordinance, the Yang di-Pertuan Negara hereby exempts generally from the provisions of the said Ordinance the members and officers of the Singapore Turf Club in respect of any public lottery or sweepstake held, promoted, organized, administered or operated by it or its duly authorized officers or agents."

The question is whether the sweepstake conducted by the Turf Club on 17th February 1963, in which the winning ticket was drawn by the plaintiff, is covered by the exemption granted on 2nd June 1960, no exemption having been granted under the repealing Ordinance of 1961.

I think that the lottery conducted by the Singapore Turf Club is, by virtue of section 9 of the Interpretation and General Clauses Ordinance (Cap. 2), which provides for subsidiary legislation made under a repealed Ordinance to remain in force until revocation or replacement under the repealing Ordinance, so far as it is not inconsistent with the repealing Ordinance. There is no similar provision in the Interpretation Act of 1889 of the United Kingdom where the position is that, in the absence of a saving provision in the repealing Act, subordinate legislation under the Act repealed expires. The repealing Ordinance of 1961 which is said to be a consolidating Ordinance however contains a few provisions creating prohibitions and penalties which are not contained in the repealed Ordinance. I do not agree with defence counsel that the exemption is totally bad on this ground alone. In my view, the exemption does not apply in respect of any new offences created by the repealing Ordinance but is perfectly good in respect of all other provisions, which are identical. No problem arises, however, in this action as to any new offences created by the new Ordinance as the provisions relevant to this action are identical.

It was next argued by the defence that the exemption only applies in respect of lotteries conducted by the Singapore Turf Club in strict accordance with section 23 (section 22 of Cap. 144) which allows exemptions of the members and officers of a racing club from the provisions of the Ordinance in respect of any public lottery or sweepstake held, promoted, organized, administered or operated by it or its duly authorized officers or agents, at places subject to the control or supervision of one or more of the officers of the racing club.

If section 23 had stopped a couple of lines earlier and ended with a full-stop after the word "agents" one could find little fault with what happened in this case or, for that matter, with what I am informed from the Bar is going on all over Singapore. Mr. Christopher maintained that, as a result of the exemption, anybody in Singapore could sell a ticket to anybody else anywhere in Singapore without contravening the Ordinance.

I do not accept this submission, however much I should like to subscribe to this view on behalf of members of the public who do not understand the intricacies of the law. What the public does not know and what it does not understand, because its attention has not been drawn more forcibly to the disastrous pitfalls to which it may be exposed is that the public lottery conducted by the Singapore Turf Club is legal only in respect of transactions which comply with the conditions imposed by the section which enables exemption from illegality.

It is, in my opinion, essential that before a public lottery conducted by the Turf Club in Singapore can be said to confer immunity from prosecution on all persons participating therein it must be shown that such a lottery is being conducted by the duly authorized officers or agents of the Turf Club at places subject to the supervision or control of one or more of its officers.

If a person buys a ticket at the premises of the Turf Club, in the normal way, or from one of its authorized agents at a place known by the club to be used for the sale of its tickets to the public he has nothing to fear. But if he were to buy tickets from the club direct or from one of its authorized agents and then sell them indiscriminately all over Singapore, or, for that matter, at any particular place in Singapore which is unknown to the officers of the Turf Club, it would be impossible to say that the lottery was then being operated at a place or places subject to the supervision or control of the Turf Club for the simple reason that the Turf Club would not, and could not be said to be supervising or controlling the conduct of its own lottery at such place or places. Such a person would, in fact, be operating a separate and distinct public lottery on his own which is beyond the protection of the exemption conferred by sections 23 and 24.

This may sound alarming but that is the legal position, as I see it, and it is supported by ample authority. Unwitting purchasers of tickets from unauthorized persons at places which are not subject to control and supervision by the Turf Club are taking a risk in doing so because the exemption does not apply to such purchases and they are liable to prosecution. Unauthorized persons who make such sales are also committing an offence and this is what the defendant proudly claims he did, in the instant case, and therefore, he says, "I am not liable to pay the plaintiff a cent since the whole transaction is tainted with illegality apart from its being null and void."

The position is analogous to that existing before the Turf Club's lotteries were exempted. Its lotteries were then lawful private lotteries confined to its members. Courts of Appeal of the then Federated Malay States and the then Straits Settlements have held consistently in the cases of *Kader Batcha* v. *Public Prosecutor* [1] and *Rex* v. *Latip bin Haidin* [2] respectively (to mention only two — there are many more) that if a member sells a ticket to non-member then he will be organising a separate, distinct lottery of his own which is illegal.

As Thomas C.J. said in the former case —

> "a lottery which may be in the first instance comparatively harmless can be extended to an almost unlimited extent by its user for sale of tickets to the public. The public gain access to that lottery not by the permission of the original organisers but by that of the people who sell tickets either individually or broadcast to non-members. Once recognised, there would be no limit to the activities of those who provide the tickets. There would seem to be no reason why they should stop short of public lotteries whose names have become almost household words".

In *G. Benjamin* v. *M. Esmailjee* [3] Cussen J. held that —

> "The plaintiff and defendant are parties to an agreement and contract which is illegal and void. The plaintiff is the winner of a prize in the separate lottery carried on by the defendant, his cause of action is based upon the illegal and void contract between him and the defendant in which contract — in the separate and distinct lottery — they were principals.
>
> No question arises here of principal and agent as the lottery in question is the separate, distinct lottery organised by the defendant.
>
> I am of opinion that the defendant must succeed on this question of law. I find that the plaintiff has no cause of action".

In the present action, the authorized agent of the Turf Club who sold the winning ticket (amongst others) to the defendant was Yeow Kok Wah of 179-B Sembawang Road, Singapore. That was a valid sale. The defendant at the time he sold this ticket to the plaintiff was not an authorized agent of the Club nor did his existence become known to the Club nor the fact that he was selling tickets at No. 13 Neil Road until after criminal proceedings began long after the sale. The Club was not therefore in a position to supervise or control through its officers the lottery operated at this address for the simple reason that it knew nothing about it.

It was argued on the basis of the decisions in *Bridger* v. *Savage* [4] and *De Mattos* v. *Benjamin* [5] that an action for money had and received lies where a person who has received money on behalf of another retains it for his own use even though the money was received from a third person in respect of a void betting transaction which the latter could have refused to honour but did not. Thus it was argued that the defendant was the agent of the plaintiff to collect the prize money from the Turf Club and that once the Turf Club paid the money to the defendant he was bound to hand it over to his principal, the plaintiff.

These cases are attractive and at one time inclined me to the view that the plaintiff should succeed.

Unfortunately, Mr. Wee for the defendant referred me to the decision of Mudie J. in *Seong Sam* v. *Goon Food On* [6] in which *Bridger* v. *Savage, supra,* was considered and in which the learned judge held that *Bridger's* case is only an authority where the original betting or wagering transaction was void and not illegal (as it was in the case before him).

So far as the defendant was concerned, his purchase of the ticket in the first instance from an authorized agent of the Turf Club made that purchase *legal* even though it was *void* by virtue of section 11 of the Common Gaming Houses Ordinance, 1961 and section 6 of the Civil Law Ordinance (Cap. 24). Once however the Turf Club made payment though such contracts are void — strange as this may seem — the question arises whether the plaintiff was entitled to succeed in claiming the amount collected by the defendant. On the authority of *Bridger's* case he would be so entitled if there was the relationship of principal and agent between himself and the defendant. This follows the reasoning of the learned Chief Justice in the F.M.S. case of *Lim Lian Wah* v. *Lee Ah Kiew,*[7] referred to by Mudie J. where the plaintiff paid the defendant $20 for an allotment in the name of the defendant of two numbers in the Turf Club private sweepstake. Unfortunately the plaintiff in the case before me did not pay the defendant $1 for an allotment in the defendant's name. He bought the ticket outright from the defendant and the relationship between them was not one of principal and agent but that of two principals dealing with one another on a void as well as an illegal contract. In such circumstances the Court will not lend its aid to either principal to recover from the other (see further on this the decisions in *Harry Parker, Ltd.* v. *Mason.*[8] As Lord Mansfield C.J. said in *Holman* v. *Johnson*: [9]

"The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa,* or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault, *potior est conlitio defendentis.*

The court drives both parties from its presence: *procul este, prafani!* No judgment will be given, and no order made as to costs."

I have been unable to find authority for saying that a person can recover in similar circumstances where he is innocently and unwittingly a party to an illegal transaction not knowing that it is illegal. The passage I have cited above from Lord Mansfield C.J. certainly does not go as far as that. In fact it is silent on the question of lack of knowledge of illegality. To repeat, "if the cause of action appears to arise *ex turpi causa* or the transgression of a positive law of this country, there the court says he has no right to be assisted." All that requires to be proved before the court refuses aid to a plaintiff therefore is that the cause of action should appear to arise out of the transgression of the law. As I have found in this case the cause of action does so arise although I am satisfied that the plaintiff did not know that his purchase of the ticket transgressed the law. The fact remains that it did and ignorance of the law does not, I think, avail him. Further, the decision in *Sykes* v. *Beadon* [10] does not help him either.

It is therefore with some regret that I dismiss the claim of the plaintiff. The least that I can do is to make no order as to costs against him having regard to the nature of the case as a whole and the conduct of the defendant throughout which is that of a man who has unjustly enriched himself through an illegal transaction of which he has seen fit to take advantage. He ought to consider himself fortunate that he was not prosecuted for carrying on an unlawful lottery of his own.

Claim dismissed.

Solicitors: *N. A. Christopher; C. J. Koh & Co.*

JAG SINGH v. TOONG FONG OMNIBUS CO. LTD.

[P.C. (Lord Morris of Borth-y-Gest, Lord Hodson and Lord Guest) October 5, 1964]

[Privy Council Appeal No. 40 of 1962]

Damages — Personal injury — Leg — Amputation above knee — Considerations in making award.

Negligence — Damages — Quantum — Appeal — Considerations to be borne in mind.

Judicial Precedent — Damages — Guidance for awards in other cases.

This was an appeal in which it was sought to increase the amount of damages awarded to the appellant. The appellant at the date of the accident was a schoolboy aged seven. The motor bus which knocked him down ran over his right leg causing such severe crushing injuries as to necessitate the amputation of the leg. He was taken to hospital after the accident and was not unconscious at the time of his admission. The amputation was of the entire leg at a point just below the hip joint and the